

IN THE WATER COURT OF THE STATE OF MONTANA  
CLARK FORK DIVISION  
KOOTENAI RIVER BASIN (76D)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANTS: Michelle L. Tribble; Sean A. Tribble

**CASE 76D-0126-R-2023**  
76D 30130287  
76D 30130288

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

Water Right Claims 76D 30130287 and 76D 30130288 appeared in the Preliminary Decree for the Kootenai River Basin (Basin 76D) issued May 6, 2021. Both of these claims received issue remarks. Issue remarks result from Department of Natural

Resources and Conservation (“DNRC”) claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. These claims did not receive objections.

Further proceedings are not necessary to resolve the issue remarks on these claims. For organizational purposes, these claims are consolidated into Water Court Case 76D-0126-R-2023.

### **FINDINGS OF FACT**

1. Claims 76D 30130287 appeared with the following issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 76D DECREE ISSUED 03/22/1984.

USDA AERIAL PHOTOGRAPH NO. 379-31, DATED 8/10/1979 APPEARS TO INDICATE 1.0 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

2. Claim 76D 30130288 appeared with the following issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 76D DECREE ISSUED 03/22/1984.

#### **Irrigated Acres and Volume Issue Remarks**

3. The DNRC based the irrigated acres issue remark on review of a 1979 aerial photograph of the claimed place of use. Upon review of the marked-up aerial photograph in the claim file for Claim 76D 30130287, it appears “cross-hatching” depicts where the examiner observed irrigation on the photograph. However, upon review of the image, it appears there may have been irrigation occurring in areas not included in the “cross-hatching.” Additionally, the examiner checked “OK” next the maximum acres element on the examination worksheet included in the claim file. This seems to contradict a comment indicating an issue remark should be added in the place of use section of the worksheet.

4. The volume of the claim does not need to be changed if the acreage is not changed.

5. The irrigated acres and volume issue remark should be removed from the claim.

#### Notice Issue Remarks

6. Both above-captioned claims appeared with issue remarks indicating the respective claim did not appear in the previous decree issued in Basin 76D. Those remarks have served their purpose and may be removed.

#### APPLICABLE LAW

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

#### CONCLUSIONS OF LAW

1. The maximum acres and total acres of Claim 76D 30130287 may remain as they appear in the Preliminary Decree because the issue remarks and information resulting in the issue remarks do not overcome the prima facie status of the claim.

2. The evidence in the record provides the Court with a sufficient basis to resolve and remove each issue remark from each above-captioned claim.

#### RECOMMENDATIONS

The issue remarks on the above-captioned claims should be removed. Post-decree Abstracts of Water Right Claims are served with this Report to confirm the recommended changes have been made in the state’s centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Michelle L. Tribble  
Sean A. Tribble  
PO Box 274  
Eureka, MT 59917

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
KOOTENAI RIVER  
BASIN 76D**

**Water Right Number:** 76D 30130287 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** SEAN A TRIBBLE  
PO BOX 274  
EUREKA, MT 59917  
  
MICHELLE L TRIBBLE  
PO BOX 274  
EUREKA, MT 59917

**Priority Date:** JUNE 30, 1949

**Type of Historical Right:** FILED

**Purpose (use):** DOMESTIC

**Flow Rate:** 12.00 GPM

**Volume:** 9.00 AC-FT

**Households:** 1

**Maximum Acres:** 3.20

**Source Name:** GROUNDWATER

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNE	14	36N	27W	LINCOLN

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** WELL

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	3.20		SWNE	14	36N	27W	LINCOLN

**Total:** 3.20

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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

30130287

30130288

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
KOOTENAI RIVER  
BASIN 76D**

**Water Right Number:** 76D 30130288 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** SEAN A TRIBBLE  
PO BOX 274  
EUREKA, MT 59917  
  
MICHELLE L TRIBBLE  
PO BOX 274  
EUREKA, MT 59917

**Priority Date:** JUNE 30, 1949

**Type of Historical Right:** FILED

**Purpose (use):** STOCK

**Flow Rate:** 12.00 GPM

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** GROUNDWATER

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNE	14	36N	27W	LINCOLN

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** WELL

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWNE	14	36N	27W	LINCOLN

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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

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